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### WORKING PAPER

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#### **CONTRIBUTION**

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From:	General Secretariat of the Council
To:	Working Party on Aviation
N° prev. doc.:	ST 11967/20
N° Cion doc.:	ST 10840/20 + ADD1 ST 10841/20 + COR1
Subject:	Amended proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the implementation of the Single European Sky (recast) - Comments by Member States on Network management

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Delegates will find in annex comments by Spain on the above mentioned proposals, as regards Network management.

**SPAIN'S WRITTEN COMMENTS ON CHAPTER IV OF THE  
EUROPEAN COMMISSION'S PROPOSAL  
ST 10840/20 + ADD1 – NETWORK MANAGEMENT**

*(26/10/2020)*

**General comments**

Spain greatly appreciates the new proposal on the implementation of SES and thanks the Commission and the German Presidency for the provision of a truly useful debate forum, having included national experts from the capital to the discussions.

This new SES proposal duly addresses past shortcomings of the European air navigation and air traffic management systems, putting the focus on the need for efficiency, digitalization and sustainability and adding provisions which take into account the demand for resilience and scalability derived from the current COVID crisis. It is now time to act, considering the long time passed since the 2013 proposal and the many issues that have arisen since then.

Concerning Chapter IV and the Network functions and management, Spain welcomes the proposal that addresses many of the issues identified in the past. A stronger role of the NM will be a valuable asset for the modernization of the current ATM/ANS system, since a clear reference for synchronized actions and improvements is needed in a scenario that is still fragmented.

To take advantage of all the parties involved, this strengthened role of the NM should be founded upon an appropriate collaborative decision making processes, timely balancing between national interests or rights of sovereignty and the interests of the European network efficiency.

In this regard, Spain kindly express a request for further clarification on the following aspects:

- The role of the NM to each network function listed in art. 26.
- The contribution of the national ANSPs and civil/military authorities to the network functions.
- The involvement of the civil and military authorities in the collaborative decision making processes.

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**Text proposals and needs for clarification**

Several questions and proposals of modification of the legal text are proposed in the following pages, using the original paperwork sent by the Commission as a basis for the shake of clarity.



**CHAPTER IV**

**⊗ NETWORK MANAGEMENT ⊗**

*Article 266*

**Network ⊗ functions ⊗ ~~management and design~~**

1. The air traffic management (~~ATM~~) network functions shall ~~allow optimum~~ ⇒ ensure the sustainable and efficient ⇐ use of the airspace ⇒ and of scarce resources. ⇐ ~~and~~ ⊗ They shall also ⊗ ensure that airspace users can operate ~~preferred~~ ⇒ environmentally optimal ⇐ trajectories, while allowing maximum access to airspace and air navigation services. Those network functions ⇒, enumerated in paragraphs 2 and 3, ⇐ shall ⇒ support the achievement of the Union-wide performance targets and shall be based on operational requirements ⇐ ~~be aimed at supporting initiatives at national level and at the level of functional airspace blocks and shall be executed in a manner which respects the separation of regulatory and operational tasks.~~

**Proposal:**

1. The air traffic management network functions shall aim to ensure the sustainable and efficient use of the airspace and of scarce resources. They shall also ensure that airspace users can operate environmentally ~~optimal~~ optimized trajectories, while allowing maximum access to airspace and air navigation services. Those network functions, enumerated in paragraphs 2 and 3, shall support the achievement of the Union-wide performance targets and shall be based on operational requirements, without prejudice to national security and defence requirements.

**Comentado [REDACTED]: Rationale:**

Decisions taken for the interest of the network should be compatible with national security and defence requirements.  
  
To ensure the sustainable and efficient use of airspace is an aim, and not always reachable. On the other hand, "optimized" might be the maximum achievable in accordance with the different possibilities.

2. ~~In order to achieve the objectives referred to in paragraph 1 and without prejudice to the responsibilities of the Member States with regard to national routes and airspace structures, the Commission shall ensure that~~ The following ⊗ network ⊗ functions ⊗ referred to in paragraph 1 ⊗ include the following ~~envisaged~~:

- (a) the design ⇒ and management ⇐ of the European ~~route network~~ ⇒ airspace structures ⇐ ;

**Proposal:**

- (a) the design and management of the European ~~airspace structures~~ route network

**Comentado [REDACTED]: Need for clarification:**

The expected role or the NM in each proposed function should be clarified (support, contribute, decide?), in order to assess how that role combines with the liability/accountability of the national ANSPs or MS.

**Comentado [REDACTED]: Need for clarification:**

It is not clear what "European airspace structures" refers to and what the scope (and the associated responsibilities) of the concept is.

**Comentado [REDACTED]: Rationale:**

Design and management of airspace structures is a national prerogative (sovereignty) and final decision shall correspond to MS.

⇒ (b) air traffic flow management; ⇐

(c) the coordination of scarce resources within aviation frequency bands used by general air traffic, in particular radio frequencies as well as coordination of radar transponder codes.

↓ new

3. The network functions referred to in paragraph 1 also include the following:

(a) optimisation of airspace design for the network and facilitation of delegation of air traffic services provision through co-operation with the air traffic service providers and Member State authorities;

Proposal to add:

The delegation of the services provision should always take into account the necessary agreements for the coordination of general and operational traffic, the need to maintain the adequate coordination in all the ASM levels affected by the delegation as well as the agreements related to the sharing of data necessary for the Defense and security interest (i.e. data for identification of traffics).

(b) management of the delivery of air traffic control capacity in the network as set out in the binding Network Operations Plan (NOP);

(c) function for coordination and support in case of network crisis.

(d) air traffic flow and capacity management;

(e) the management of the planning, monitoring and coordination of implementation activities of the deployment of infrastructure in the European ATM network, in accordance with the European ATM Master Plan, taking into account operational needs and associated operational procedures;

(f) the monitoring of the functioning of the European ATM network infrastructure.

**Comentado** [REDACTED]: Need for clarification:

The scope of the "delegation of services" concept is not clear within the context of network functions, taking into account that this is a national prerogative subject to designation by MS. Its relation to airspace design is not clear either.

Does it refer only to cross-border services (e.g. ADSP) or other cross-border agreements between ANSPs?

**Comentado** [REDACTED]: Rationale:

Delegation of services should always take into account the requirements for coordination of GAT-OAT and coordination of ASM at all levels.

**Comentado** [REDACTED]: Need for clarification:

The NM role as Infrastructure Manager must be clarified, including the involvement of the operational stakeholders, as it is currently the case for the SDM (driven by ANSPs, AUs and AOs). In addition, the impact of this role on the rationalisation of military infrastructure (or relevant civil infrastructure) should also be clarified.

The establishment of any framework to reinforce the management and evolution of ATM infrastructure required to support the European Network, must be supported by strong ATM industry involvement in its definition, planning and execution, specifically from those who will make the investment decisions and carry out the required deployments and complemented by effective and inclusive consultation mechanisms.

In this regard, the new Partnership to be established between the Network Manager and the operational stakeholders (ANSPs, AUs, AOs) is the right body to allocate all these functions.

↓ 1070/2009 Art. 3.6

4. The functions listed in ~~the first this subparagraph~~ paragraphs 2 and 3 shall not involve the adoption of binding measures of a general scope or the exercise of political discretion. ~~They shall take into account proposals established at national level and at the level of functional airspace blocks.~~ They shall be performed in coordination with military authorities in accordance with agreed procedures concerning the flexible use of airspace.

Proposal:

4. The functions listed in paragraphs 2 and 3 shall not involve the adoption of binding measures of a general scope or the exercise of political discretion and shall be performed in coordination with civil and military authorities. ~~They shall be performed in coordination with military authorities in accordance with agreed procedures concerning the flexible use of airspace.~~

**Comentado [REDACTED]: Rationale:**

The implications of "general scope" and "political discretion" are not clear from the text nor the whereas. Functions performed for the interest of the network should be compatible with the national prerogative for assessing the airspace structures and national security and defence requirements.

Coordination with military authorities should not be restricted to procedures concerning FUA, but also to other relevant functions (e.g. infrastructure management).

↓ new

5. The Commission shall be empowered to ~~adopt delegated acts~~ in accordance with Article 36 to amend this Regulation in order to add functions to the ones listed in paragraphs 2 and 3, where necessary for the functioning and performance of the network.

**Comentado [REDACTED]: Need for clarification:**

In case this process is expected to be based on a collaborative decision making process prone to consensus, this fact should be explicitly stated in art. 26(5).

↓ 1070/2009 Art. 3.6 (adapted)

#### Article 27

#### ⊗ The Network Manager ⊗

↓ new

1. In order to achieve the objectives referred to in Article 26, the Commission, supported by the Agency where relevant, shall ensure that the Network Manager contributes to the execution of the network functions set out in Article 26, by carrying out the tasks referred to in paragraph 4.

↓ 1070/2009 Art. 3.6 (adapted)

⇒ new

2. The Commission may, ~~after consultation of the Single Sky Committee and in conformity with the implementing rules referred to in paragraph 4, entrust to~~  appoint  Eurocontrol or another impartial and competent body;  to carry out  the tasks ~~necessary for the execution of the functions listed in the first subparagraph~~  of the Network Manager . To this end, the Commission shall adopt an implementing act in accordance with the examination procedure referred to in Article 37(3). This appointment Decision shall include the terms and conditions of the appointment, including the financing of the Network Manager.

3.  The tasks of the Network Manager  ~~These tasks~~ shall be executed in an  independent,  impartial and cost ~~effective~~  efficient  manner ~~and performed on behalf of Member States and stakeholders~~. They shall be subject to appropriate governance, which ~~recognises~~  shall recognise  ~~the~~ separate accountabilities for service provision and ~~regulation~~  where the competent body designated as the Network Manager also has regulatory functions.   In the execution of its tasks, the Network Manager shall take  ~~taking~~ into consideration the needs of the whole ATM network and ~~with the full~~  shall fully involve  ~~involvement of~~ the airspace users, ~~and~~ air navigation service providers , aerodrome operators and the military.

**Comentado [REDACTED]:** Need for clarification:

It is not clear what "regulatory functions" refers to and what the implications of these functions are. The SES 2+ proposal generally focuses on separating services provision from regulation at national level, while those two functions are mixed in art. 27(3) for the NM.

[Proposal:]

3. [...] In the execution of its tasks, the Network Manager shall take into consideration the needs of the whole ATM network and shall fully involve the airspace users, air navigation service providers, aerodrome operators and the military, while avoiding any adverse impact on national and collective defense capabilities.

**Comentado [REDACTED]:** Rationale:

Text added in reference to art. 9(7)(c) of Regulation (UE) 409/2013 (SDM).

↓ new

4. The Network Manager shall contribute to the execution of the network functions through support measures aimed at safe and efficient planning and operations of the network under normal and crisis conditions and through measures aimed at the continuous improvement of network operations in the Single European Sky and the overall performance of the network, especially regarding the

implementation of the performance scheme. The action taken by the Network Manager shall take account of the need to fully integrate the airports in the network.

Proposal:

4. The Network Manager shall contribute to the execution of the network functions through support measures aimed at safe and efficient planning and operations of the network under normal and Network crisis conditions and through measures aimed at [...].

Comentado [REDACTED]: Rationale:

Text added in coherence with definitions in art. 2.

5. The Network Manager shall cooperate closely with the Agency acting as PRB in order to ensure that the performance targets referred to in Article 10 are adequately reflected in the capacity to be delivered by individual air navigation service providers and agreed between the Network Manager and those air navigation service providers in the Network Operations Plan.

6. The Network Manager shall:

- (a) decide on individual measures to implement the network functions and to support the effective implementation of the binding Network Operations Plan and the achievement of the binding performance targets;
- (b) advise the Commission and provide relevant information to the Agency acting as PRB on the deployment of the ATM network infrastructure in accordance with the European ATM Master Plan, in particular to identify investments necessary for the network.

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7. The Network Manager shall take decisions through a cooperative decision-making process. Parties to the cooperative decision-making process shall act to the maximum extent possible with a view to improving the functioning and performance of the network. The cooperative decision-making process shall promote the interest of the network.

Proposal:

7. The Network Manager shall take decisions through a cooperative decision-making process. Without prejudice to Member States' sovereignty over their airspace and to the requirements of the Member States relating to public order, public security and defence matters, parties to the cooperative decision-making process shall [...]

Comentado [REDACTED]: Rationale:

If the infrastructure manager will be enabled to decide on the rationalisation of the military infrastructure (or relevant civil infrastructure), the military counterpart should also be somehow represented in the decision-making process.

↓ 1070/2009 Art. 3.6

~~2. The Commission may add to the list of the functions in paragraph 2 after proper consultation of industry stakeholders. These measures, designed to amend non-essential elements of this Regulation by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 5(4) of the framework Regulation.~~

↓ new

8. By way of implementing acts adopted in accordance with the examination procedure referred to in Article 37(3), the Commission shall establish detailed rules for the execution of the network functions, the tasks of the Network Manager, governance mechanisms including decision-making processes and crisis management.

Comentado [REDACTED]: Need for clarification:

The SES 2+ proposal does not include any reference to the expected future governance mechanisms. If all designated ANSPs at national level are to be represented (rather than FAB) and this representation will be proportional to the geographical scope of the service provision, a statement related to this fact should be added to the proposal.

↓ 1070/2009 Art. 3.6

~~4. Detailed rules for the implementation of the measures referred to in this Article, except for those referred to in paragraphs 6 to 9, shall be adopted in accordance with the regulatory procedure referred to in Article 5(3) of the framework Regulation. Those implementing rules shall address in particular:~~

~~(a) the coordination and harmonisation of processes and procedures to enhance the efficiency of aeronautical frequency management including the development of principles and criteria;~~

~~(b) the central function to coordinate the early identification and resolution of frequency needs in the bands allocated to European general air traffic to support the design and operation of European aviation network;~~

~~(c) additional network functions as defined in the ATM Master Plan;~~

~~(d) detailed arrangements for cooperative decision making between the Member States, the air navigation service providers and the network management function for the tasks referred to in paragraph 2;~~

~~(e) arrangements for consultation of the relevant stakeholders in the decision making process both at national and European levels; and~~

~~(f) within the radio spectrum allocated to general air traffic by the International Telecommunication Union, a division of tasks and responsibilities between the network management function and national frequency managers, ensuring that the national frequency management functions continue to perform those frequency assignments that have no impact on the network. For those cases which do have an impact on the network, the national frequency managers shall cooperate with those responsible for the network management function to optimise the use of frequencies.~~

↓ new

9. Aspects of design of airspace structures other than those referred to in paragraphs 2 and 3 of Article 26 shall be addressed by Member States. In this regard, Member States shall take into account air traffic demands, seasonality and complexity of air traffic and of performance plans. Before deciding on those aspects, they shall consult airspace users concerned or groups representing such airspace users and military authorities as appropriate.

Proposal:

9. Aspects of design of airspace structures other than those referred to in paragraphs 2 and 3 of Article 26 shall be addressed by Member States. In this regard, Member States ~~shall~~ **should** take into account air traffic demands, seasonality and complexity of air traffic and of performance plans [...]

Comentado [REDACTED]: Rationale:

It should be performed to the greatest extent possible, depending on the local circumstances.

↓ 1070/2009 Art. 3.6

~~5. Aspects of airspace design other than those referred to in paragraph 2 shall be dealt with at national level or at the level of functional airspace blocks. This design process shall take into account traffic demands and complexity, national or functional airspace block performance plans and shall include full consultation of relevant airspace users or relevant groups representing airspace users and military authorities as appropriate.~~

~~6. Member States shall entrust Eurocontrol or another impartial and competent body with the performance of air traffic flow management, subject to appropriate oversight arrangements.~~

~~7. Implementing rules for air traffic flow management, including the necessary oversight arrangements, shall be developed in accordance with the advisory procedure referred to in Article 5(2) of the framework Regulation and adopted in accordance with the regulatory procedure referred to in Article 5(3) of the framework Regulation, with a view to optimising available capacity in the use of airspace and enhancing air traffic flow management processes. These rules shall be~~

~~based on transparency and efficiency, ensuring that capacity is provided in a flexible and timely manner, consistent with the recommendations of the ICAO Regional Air Navigation Plan, European Region.~~

~~8. The implementing rules for air traffic flow management shall support operational decisions by air navigation service providers, airport operators and airspace users and shall cover the following areas:~~

~~(a) flight planning;~~

~~(b) use of available airspace capacity during all phases of flight, including slot assignment; and~~

~~(c) use of routings by general air traffic, including:~~

~~the creation of a single publication for route and traffic orientation;~~

~~options for diversion of general air traffic from congested areas, and~~

~~priority rules regarding access to airspace for general air traffic, particularly during periods of congestion and crisis.~~

~~9. When developing and adopting the implementing rules the Commission shall, as appropriate and without prejudice to safety, take into account consistency between flight plans and airport slots and the necessary coordination with adjacent regions.~~

↓ new

#### Article 28

##### **Transparency of accounts of the Network Manager**

1. The Network Manager shall draw up, submit to and publish its financial accounts. Those accounts shall comply with the international accounting standards adopted by the Union. Where, due to the legal status of the Network Manager, full compliance with the international accounting standards is not possible, the Network Manager shall achieve such compliance to the maximum possible extent.

2. The Network Manager shall publish an annual report and regularly undergo an independent audit.

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↓ 550/2004

~~Article 10~~

~~Relations between service providers~~

~~1. Air navigation service providers may avail themselves of the services of other service providers that have been certified in the Community.~~

~~2. Air navigation service providers shall formalise their working relationships by means of written agreements or equivalent legal arrangements, setting out the specific duties and functions assumed by each provider and allowing for the exchange of operational data between all service providers in so far as general air traffic is concerned. Those arrangements shall be notified to the national supervisory authority or authorities concerned.~~

~~3. In cases involving the provision of air traffic services, the approval of the Member States concerned shall be required. In cases involving the provision of meteorological services, the approval of the Member States concerned shall be required if they have designated a provider on an exclusive basis in accordance with Article 9(1).~~

↓ new

**Article 29**

**Relations with stakeholders**

The air traffic service providers shall establish consultation mechanisms to consult the relevant airspace users and aerodrome operators on all major issues related to services provided, including relevant changes to airspace configurations, or strategic investments which have a relevant impact on air traffic management and air navigation service provision and/or charges. The airspace users shall also be involved in the process of approving strategic investment plans. The Commission shall adopt measures detailing the modalities of the consultation and of the involvement of airspace users in approving investment plans. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 37 (3).

Proposal:

The air traffic service providers shall establish consultation mechanisms to consult the relevant airspace users, civil and military authorities and aerodrome operators on all major issues related to services provided [...]

**Comentado** [REDACTED]: **Rationale:**

Text added according to national procedures.

↓ 1070/2009 Art. 2.6 (adapted)

⇒ new

**Article 30**

**Relations with military authorities**

Member States shall, within the context of the common transport policy, ~~take the necessary steps to~~ ensure that written agreements between the competent civil and military authorities or **equivalent legal arrangements** are established or renewed in respect of the management of specific airspace blocks ⇒ and notify the Commission thereof ⇐.

**Comentado** [REDACTED]: **Need for clarification:**

A clear definition should be added to clarify what "equivalent legal arrangements" refers to.

↓ 550/2004

~~Article 13~~

~~**Access to and protection of data**~~

~~1. In so far as general air traffic is concerned, relevant operational data shall be exchanged in real time between all air navigation service providers, airspace users and airports, to facilitate their operational needs. The data shall be used only for operational purposes.~~

~~2. Access to relevant operational data shall be granted to appropriate authorities, certified air navigation service providers, airspace users and airports on a non-discriminatory basis. 3. Certified service providers, airspace users and airports shall establish standard conditions of access to their relevant operational data other than those referred to in paragraph 1. National supervisory authorities shall approve such standard conditions. Detailed rules relating to such conditions shall be established, where appropriate, in accordance with the procedure referred to in Article 5(3) of the framework Regulation.~~

↓ new

**Article 31**

**Availability of and access to operational data for general air traffic**

1. With regard to general air traffic, relevant operational data shall be made available in real-time, on a non-discriminatory basis and without prejudice to security or defence policy interests, by all air navigation service providers, airspace users, airports, and the Network Manager, including on cross-border basis and on a Union-wide basis. Such availability shall be to the benefit of certified or declared air traffic service providers, entities having a proven interest in considering the provision of air navigation services, airspace users and airports as well as the Network Manager. The data shall be used only for operational purposes.

Proposal:

1. [...] Such availability shall be to the benefit of ~~certified or declared~~ service providers, entities having a proven interest in considering the provision of air navigation services, airspace users and airports as well as the Network Manager. The data shall be used only for operational purposes.

2. Prices for the service referred to in paragraph 1 shall be based on the marginal cost of making the data available.

Proposal:

2. Prices for the service referred to in paragraph 1 shall be based on the marginal cost of making the data available and at no cost for entities providing public services.

**Comentado** : Need for clarification:

Does this sentence refer to military services providers serving GAT (without certificate, as per art. 7 of Regulation (CE) 550/2004)?

**Comentado** : Rationale:

The proposed text would exclude military services providers from the scope.

**Comentado** : Need for clarification:

Since the production of this data is interrelated with multiple services and this interrelation is a complex one, depending on multiple local configurations, the "marginal" adjective is not a evident one in this context.

**Comentado** : Rationale:

For the shake of security, related entities providing public services (such as police or military) should not be forced to pay for this data.

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3. Access to relevant operational data as referred to in paragraph 1 shall be granted to the authorities in charge of safety oversight, performance oversight and network oversight, including the Agency.

Proposal:

3. Access to relevant operational data as referred to in paragraph 1 shall be granted to the authorities in charge of security and defense, safety oversight, performance oversight and network oversight, including the Agency.

**Comentado** [REDACTED] **Rationale:**

Same intention as in comment to art. 31(2).

4. The Commission may lay down the detailed requirements for the making available of and the access to data in accordance with paragraphs 1 and 3 and the methodology to set the prices as referred to in paragraph 2. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 37(3).

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